

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 FELIX P. LUCERO,) No. C 10-01339 JF (PR)
12 Petitioner,) ORDER TO SHOW CAUSE
13 vs.)
14)
15 R. K. WONG, Warden,)
16 Respondent.)
17 _____)

18 Petitioner, a California state prisoner at San Quentin State Prison, proceeding pro
19 se, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging
20 the 2009 decision of the Board of Parole Hearings (“Board”) finding him unsuitable for
21 parole. Petitioner has paid the filing fee. The Court orders Respondent to show cause
22 why the petition should not be granted.

23
24 **STATEMENT**

25 According to the petition, sometime in the mid-1990s, Petitioner was sentenced to
26 eighteen years to life in state prison after a jury found him guilty of second degree murder
27 in San Joaquin County Superior Court. (Pet. 2.) Petitioner challenges the Board’s
28 decision denying him parole after a parole suitability hearing on June 11, 2009. Petitioner

1 filed habeas petitions in the state superior court, state appellate court, and the state
2 supreme court, all of which were denied as of March 10, 2010. Petitioner filed the instant
3 federal petition on March 30, 2010.

4

5 DISCUSSION

6 **A. Standard of Review**

7 This Court may entertain a petition for writ of habeas corpus “in behalf of a person
8 in custody pursuant to the judgment of a state court only on the ground that he is in
9 custody in violation of the Constitution or laws or treaties of the United States.” 28
10 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975).

11 A district court shall “award the writ or issue an order directing the respondent to
12 show cause why the writ should not be granted, unless it appears from the application that
13 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

14 **B. Petitioner’s Claims**

15 As grounds for federal habeas relief, Petitioner alleges that the Board violated his
16 right to due process when it denied parole “on incorrect and incomplete evidence and
17 evidence that did not provide a nexus to current dangerousness.” (Pet. Attach. at 1.)
18 Petitioner’s second claim is that the hearing “under the provisions of Proposition 9
19 (Marcy’s Law) violated his due process rights and violated the expo [sic] facto clause of
20 the federal constitution. Liberally construed, Petitioner’s claims are cognizable under §
21 2254. The Court orders Respondent to show cause why the petition should not be
22 granted.

23

24 CONCLUSION

25 1. The Clerk shall serve by mail a copy of this order and the petition
26 and all attachments thereto upon the Respondent and the Respondent’s attorney, the
27 Attorney General of the State of California. The Clerk shall also serve a copy of this
28 order on the Petitioner.

1 2. Respondent shall file with the Court and serve on Petitioner, **within sixty**
2 **(60) days** of the date this order is filed, an answer conforming in all respects to Rule 5 of
3 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus
4 should not be granted. Respondent shall file with the answer and serve on Petitioner a
5 copy of all portions of the state parole record that have been transcribed previously and
6 that are relevant to a determination of the issues presented by the petition.

7 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
8 with the Court and serving it on Respondent **within thirty (30) days** of his receipt of the
9 answer.

10 3. Respondent may file a motion to dismiss on procedural grounds in lieu of
11 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
12 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file
13 with the Court and serve on Respondent an opposition or statement of non-opposition
14 **within thirty (30) days** of receipt of the motion, and Respondent shall file with the court
15 and serve on Petitioner a reply **within fifteen (15) days** of receipt of any opposition.

16 4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded
17 that all communications with the Court must be served on respondent by mailing a true
18 copy of the document to Respondent's counsel. Petitioner must keep the Court and all
19 parties informed of any change of address by filing a separate paper captioned "Notice of
20 Change of Address." He must comply with the Court's orders in a timely fashion.
21 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
22 to Federal Rule of Civil Procedure 41(b).

23 IT IS SO ORDERED.

24 DATED: 8/2/10



JEREMY FOGEL
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FELIX P LUCERO,

Case Number: CV10-01339 JF

Petitioner,

CERTIFICATE OF SERVICE

v.

R. K. WONG, Warden,

Respondent.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 8/11/10, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Felix P. Lucero K35234
San Quentin State Prison
San Quentin, CA 94974

Dated: 8/11/10

Richard W. Wieking, Clerk